

REMARKS

Claims 2-49 and 68-76 are pending.

The above amendments have been made in relation to the claims in the courtesy copy provided to the Examiner on November 18, 2003, which the Examiner stated in the Office Action that he would use for all purposes.

Applicants submit that the amendment to claim 2 should not narrow the scope of the amended recitations because the amendment merely adds the claim elements of claim 1 into claim 2 and makes cosmetic changes. In addition, the amendments to claims 3-48 and 68-76 should not narrow the scope of the amended recitations because the amendments are merely cosmetic (e.g. replacing "a compound thereof" with "compounds thereof", and replacing "containing the moieties represented by Formula 1 and/or Formula 2" with "containing at least one moiety selected from the group consisting of the moieties represented by Formula 1 and the moieties represented by Formula 2") or removing multiple dependency.

The amendment to claims 68-76 is supported by claims 68-76 as filed and page 45 of the specification.

Restriction Requirement

Applicants elect with traverse to prosecute the invention of Group II, claims 4-48. Applicants respectfully submit that the restriction requirement is improper because there would have been no undue burden to examine claims 2-49 and 68-76 on the merits. Applicants request that claims 2-49 and claims 68-76 be rejoined.

Miscellaneous Issues

Applicants respectfully contend that it was improper for the Examiner to disregard the Amendment filed on January 21, 2003 because of alleged indefiniteness, which was not explained. The Amendment was filed as a complete response to a non-final Office Action of October 21, 2002. Applicants have the right under 37 CFR 1.111 to file the Amendment, which should have been examined on the merits according to 37 CFR 1.112. However, in order to advance prosecution, applicants have amended the claims as shown above, relative to the claims in the courtesy copy filed on November 18, 2003.

Citing *Ex parte Slob*, the Examiner alleged that claim 1 was indefinite because of functional language. Applicants respectfully disagree. Claim 1 has been canceled, and its functional language has been incorporated into claim 2. Functional language is not *per se* indefinite. See *In re Swinehart*, 169 USPQ 226 (CCPA 1971); MPEP 2173.05(g). Applicants submit that claim 2, though containing some functional language, is not indefinite. Especially since there are structural elements in claim 2.

The Examiner relied on *Ex parte Grasselli* for his position that negative language is indefinite in claims 2, 4 and 49. Applicants respectfully disagree. Applicants submit that *Ex parte Grasselli* did not hold that negative language is indefinite. Instead, *Ex parte Grasselli* merely held that introduction of a negative limitation into a claim without support from the original disclosure fails to meet the written description requirement. In the instant case, the negative language in claims 2, 4 and 49 has support in the original disclosure. The negative language is also not indefinite. One skilled in the art would know the boundaries of these claims. Claims 2, 4 and 49 are not indefinite.

If this paper is deemed not timely, applicants petition for an appropriate extension of time. The petition fee, and any other fees that may be required in relation to this paper, can be charged to Deposit Account No. 11-0600 referencing Docket No. 11197/5.

Respectfully submitted,

KENYON & KENYON

Date: June 25, 2004

King L. Wong
King L. Wong, Ph.D.
Reg. No. 37,500

1500 K Street, NW, Suite 700
Washington, D.C. 20005
202-220-4200 (tel)
202-220-4201 (fax)
DC495296v2